| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-0325  Responded to: 23rd June 2023 |
| --- | --- |

Your request for information is replicated below, together with our response.

Please accept our apologies for the delay in responding.

We have received an unprecedented volume of requests on the subject of police officer conduct and criminality and that has, unfortunately, impacted on our ability to meet the statutory timescales in some cases.

The following information may be useful to explain how our complaint and conduct processes work and to provide some additional context to your response.

The Police Scotland [Complaints About the Police (CAP) Standard Operating Procedure (SOP)](https://www.scotland.police.uk/spa-media/fifhh5vo/complaints-about-the-police-sop.pdf) outlines how we deal with complaints and they are categorised as per appendices G and H of that document.

The formal disciplinary process for Police Officers is governed by [The Police Service of Scotland (Conduct) Regulations 2014](https://www.legislation.gov.uk/ssi/2014/68/contents/made).

The Police Service of Scotland (Conduct) Regulations 2014 [Scottish Government Guidance Document](https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2018/04/conduct-and-performance-procedures-police-guidance/documents/police-guidance-conduct-procedures/police-guidance-conduct-procedures/govscot%3Adocument/Police%2BService%2Bof%2BScotland%2B%2528conduct%2529%2Bregulations%2B2014.pdf) provides further information on the Conduct process and conduct cases are categorised in line with our [Standards of Professional Behaviour](https://www.scotland.police.uk/about-us/who-we-are/our-standards-of-professional-behaviour/).

The complaint process and the conduct process are distinct from each other and both have separate assessment and recording processes within the Professional Standards Department (PSD) database.

Once complaint matters are concluded, the circumstances may be referred for a Conduct Assessment (not necessarily every aspect of the complaint, or every officer involved).

There is therefore potential for the same individual/circumstances to appear on a complaint case and a conduct case. Due to these processes, complaints and conduct matters cannot simply be added together.

There can be one or more allegations contained within one complaint case and equally, there can be one or more subject officers relative to each allegation.

Conduct cases may contain multiple allegations, but are limited to one subject officer per case.

Subject officers are counted once per conduct case, however the same officer may be subject to multiple cases and therefore may appear more than once.

Each case may involve multiple allegations and (for complaints only) each allegation may be linked to multiple subject officers.

## The time scale I am interested in is since the inception of Police Scotland.

Information for the period 1 April 2013 to 31 March 2014 is *not held* by Police Scotland and section 17 of the Act therefore applies.

The national PSD database was established in April 2014 and all responses therefore relate to the period 1 April 2014 to 31 March 2023.

## Can you please advise how many police officers serving in police Scotland have been reported to the procurator fiscal for consideration of prosecution for criminal activity?

You will note from the CAP SOP that *‘where there is a* ***reasonable inference*** *that a crime* ***may*** *have been committed’* the circumstances **must** be reported to the Crown Office and Procurator Fiscal Service (COPFS) for independent assessment and consideration of criminal proceedings.

It should be noted that this includes all ‘allegations’ whether there is a sufficiency of evidence or not - therefore a ‘report’ to COPFS does not necessarily mean that any charges were libelled.

All off duty matters involving a Police Officer are treated in the same manner as they would be for a member of the public and the same burden of proof applies.

A total of 3,145 Police Officers were linked to criminal allegations attached to reports *sent* to the Procurator Fiscal between 01/04/2014 and 31/01/2023 inclusive, at a time when they were serving with the police.

Please note that not all officers linked to the relevant allegations on the PSD database will necessarily be *reported*, as the latter step requires a sufficiency of evidence to have been established (initial recording on the database does not).

A total of 2,642 cases linked to the 3,145 individual officers would therefore need to be manually reviewed to ascertain exactly which officers were *reported* to the Procurator Fiscal, an exercise I estimate would far exceed the cost limitations set out in the Act.

As you may be aware the current cost threshold is £600.

I therefore regret to inform you that I am unable to provide you with the information you have requested, as it would prove too costly to do so within the context of the fee regulations.

As such, and in terms of section 16(4) of the Act where section 12(1) (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

## How many were prosecuted? Of those prosecuted what were the category of the offences?

Again, this data is not easily retrievable from the PSD database and I regret to inform you that I am unable to provide you with the information you have requested, as it would prove too costly to do so within the context of the fee regulations.

As such, and in terms of section 16(4) of the Act where section 12(1) (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

As outlined above, the current cost threshold is £600 and I estimate that it would cost well in excess of this amount to process your request.

To explain, the Crown Office and Procurator Fiscal Service (COPFS) decide whether or not to instigate criminal proceedings.

The information is shared with Police Scotland and recorded on the PSD database but only at case disposal stage.

I can confirm that of the 3,145 officers listed above, 48 officers were linked to allegations which led to criminal proceedings and 2,614 were linked to cases which were either not proceeded with by COPFS or which involved an alternative to prosecution (Fiscal Fine etc).

For the remaining 483 officers, no searchable outcome information is held at this time and so each case would have to be individually assessed. It is likelythat many of these cases will be live but that cannot be confirmed without case by case assessment.

## How many were dismissed from the force for criminal activity and not prosecuted?

Please note that the Police Service of Scotland (Conduct) Regulations 2014 only apply to serving officers therefore any conduct proceedings cease to progress if an officer retires or resigns from the Force. As previously mentioned, the recording of officer misconduct is aligned to the Standards of Professional Behaviour and does not differentiate whether the conduct is linked to ‘criminal activity’ as you request.

To be helpful, I can advise you that between 01/04/2014 and 31/03/2023 a total of 27 police officers have been dismissed from the force.

Without a definition of what you mean by ‘criminal activity’ we are unable to provide further detail.

If you provide some clarity, we can review these cases individually and come back to you.

## Of those not prosecuted what was the reason given for not prosecuting a police officer for criminal activity?

As outlined above, the Crown Office and Procurator Fiscal Service (COPFS) decide whether or not to instigate criminal proceedings. As the decision on whether or not to prosecute lies with COPFS, you may wish to contact them in relation to this part of your request. The information sought is not held by Police Scotland and section 17 of the Act therefore applies.

## How many police officers serving in Police Scotland have a criminal conviction?

## Of those police officers serving with a criminal conviction what are the category of offences they committed?

I regret to inform you that I am unable to provide you with the information you have requested, as it would prove too costly to do so within the context of the fee regulations.

As you may be aware the current cost threshold is £600 and I estimate that it would cost well in excess of this amount to process your request.

As such, and in terms of Section 16(4) of the Freedom of Information (Scotland) Act 2002 where Section 12(1) of the Act (Excessive Cost of Compliance) has been applied, this represents a refusal notice for the information sought.

By way of explanation, the information sought is held on the Scottish Criminal History System and it is not possible to search the system based on occupation, nor is there any other automated means by which data regarding serving police officers could be retrieved.

As such, the only way to research your request would be to individually research each Police Scotland officer - (16,615 FTE as at March 2023 - last published data).

At a conservative estimate of a few minutes per officer, that is an exercise we estimate would far exceed the £600 cost limit.

You may be interested in a recent statement from Deputy Chief Constable Fiona Taylor QPM:

[Police Scotland statement on vetting checks of officers and staff](https://www.scotland.police.uk/what-s-happening/news/2023/january/police-scotland-statement-on-vetting-checks-of-officers-and-staff/)

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.